

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.1216 OF 2001

Bhaskar Shivram Nerurkar)
An Indian Inhabitant, resident of)
Sharda Singh Chawl No.2/4)
Ram Mandir Road, Ghas Bazar)
Goregaon (East), Mumbai 400 063.).. Petitioner

Versus

M/s.Shreyas Industrial Estate Society)
A Co-operative Society registered)
under the Maharashtra Co-operative)
Societies Act, 1960, having its office)
at Western Express Highway, Behind)
Jay Coach, Goregaon (East))
Mumbai 400 063.).. Respondent

Mr.K.S.Bapat for the Petitioner.

Mr.Rajesh Gehani for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 8TH AUGUST 2005

ORAL JUDGMENT :

. This Petition challenges the Award dated 3rd December 1999 passed by the First Labour Court, Mumbai in Reference (IDA) No.617 of 1997. The Labour Court dismissed the Reference made to it for adjudication of the dispute with regard to the Petitioner's reinstatement with continuity of service and full back wages.

2. According to the Petitioner, he was employed from 1st January 1990 upto 1st December 1996 as a Security Guard with the Respondent. As the Petitioner

and other co-workers were being paid low emoluments, they raised a demand on 28th November 1996. It appears that soon thereafter on 8th December 1996 the services of the Petitioner were terminated along with other Security Guards. The Petitioner, therefore, approached the machinery available under the Industrial Disputes Act, 1947 for adjudication of the dispute before the Labour Court. The Reference was accordingly made to the Labour Court, Mumbai being Reference (IDA) No.617 of 1997.

3. In the Statement of Claim, the Petitioner had pleaded that the muster roll maintained by the Petitioner Society bore fictitious names. The workmen were made to sign against the name of persons who were no longer in service. It is also pleaded that he and his colleagues lodged a grievance as a result of which their services were terminated on 1st December 1996.

4. In the Written Statement, the Respondent has contended that the Petitioner was not employed for a continuous period and was in service intermittently during the period from April 1994 to January 1995. It is also pleaded that since Security Guards were required to sign the wage register and muster roll, there was no question of fictitious names being found.

5. Evidence was thereafter led by the parties. The

Petitioner in his affidavit in lieu of examination in chief, has stated that the Respondent was maintaining a rough attendance book mentioning the names of the Security Guards. Their duty timings and their signatures were appended every day on it. A rough muster roll was also maintained showing the names of only some workmen who were employed. The Petitioner has also mentioned that atleast three names were shown in the wage register and muster roll despite the fact that they had left the services prior to 1996. He has averred that his services were terminated on 1st December 1996 without notice or wages in lieu thereof. In the cross-examination, he has denied the suggestion that he did not work with the Respondent Society after 1st February 1995. The Petitioner examined one Amareshkumar Shridhavan Mishra who has stated that while he was in service upto November 1993, the Petitioner was working with him. The Respondent has examined the Manager of the Society. He has produced the muster roll and wage register on record. He had denied that the Society maintained a rough attendance muster in respect of badli workers. However, he has also admitted having received the letter of 28th November 1996 under which the Petitioner and other workmen had demanded certain wage rise.

6. On assessing the pleadings and the the evidence on record, the Labour Court has dismissed the Reference.

The Labour Court observed that since the Respondent had maintained the muster roll which had been produced before it, the question of rough muster roll being maintained did not arise. The rough muster roll was produced by the workman. However, it was not found to be reliable. The Labour Court has then conjectured and surmised that since the Respondent is a Society, which is subjected to Government audit, it would not make false entries and, therefore, the Society would not maintain false registers. He has also observed that the Security Guards who are working with the Respondent are taken from the Security Guards Board under the Security Guards Act and, therefore, the question of reinstating the Petitioner with continuity of service and full back wages does not arise.

7. The evidence led before the Labour Court does indicate that besides the regular muster roll, a rough muster roll was being maintained by the Respondent. It was produced before the Labour Court. However, the Labour Court has chosen to ignore this muster roll. There is evidence on record of Amareshkumar Mishra who was no longer working with the Respondent, to indicate that while he was in service with the Respondent, the Petitioner was his co-employee. He has also deposed to the fact that two muster rolls were maintained by the Respondent.

8. Mr.Gehani submits that there were no pleadings to this effect and, therefore, any evidence on this issue need not be considered. In the Statement of Claim, the Petitioner has stated that he was an employee of the Respondent. The Respondent having denied his employment, the Petitioner in his evidence has deposed that the Respondent Society was maintaining two different muster rolls. Therefore, this evidence has rightly been permitted to be led. This evidence indicates, as seen above, that the Society was maintaining the rough muster roll and a different one which was used as a daily attendance register.

9. The submission of Mr.Gehani that the Respondent Society is not governed by the Industrial Disputes Act, 1947, cannot be accepted. This issue which is a mixed question of fact and law was never raised by the Respondent before the Labour Court. Therefore, it cannot be permitted to be raised while opposing the Writ Petition filed by the workman.

10. In these circumstances, the Award of the Labour Court set aside. Matter remanded to the Labour Court, Mumbai for leading fresh evidence.

11. Writ Petition allowed. Rule made absolute accordingly. No order as to costs.